

**In the matter of an appeal to the Senate Appeals Committee of the  
University of Ottawa:**

**BETWEEN:**

**Nicholas Ali**

**(Appellant)**

**and**

**Faculty of Graduate and Postdoctoral Studies**

**(Respondent)**

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**APPEAL SUBMISSIONS OF NICHOLAS ALI**  
(appeal from decision of the Executive Committee of the FGPS  
dated May 10, 2013)

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**PART ONE: OVERVIEW AND STATEMENT OF ISSUES ON APPEAL**

**A. Identification of Parties and Nature of Appeal**

1. The Appellant, Nicholas Ali, hereby appeals to the Senate Appeals Committee of the University ("the Senate" or the "SAC") from a decision of the Executive Committee of the Faculty of Graduate and Postdoctoral Studies (FGPS) dated May 10, 2013 ("**Appeal Decision**") denying the Appellant the right to proceed to an oral defense of his thesis in the Department of Health Sciences, School of Human Kinetics (SHK). The Appeal Decision of the FGPS was severely and irremediably flawed by procedural fairness violations before the Executive Committee. Separate and apart from the procedural errors on appeal, the Executive Committee's decision confirmed a manifestly flawed thesis review process before the School of Human Kinetics on January 30, 2013. Both levels of errors cannot be cured on appeal and pursuant to University policy require that the Senate issue a remedy that either refers the Appellant's thesis to an oral defense or directs that the Department constitute a new committee to provide a fresh review of his thesis.
2. The original SHK thesis review process for the Appellant was tainted by a reasonable apprehension of bias, conflict of interest contrary to University policies and an administrative abuse of authority by virtue of Dean Hastings'

substantive assessment of the Appellant's work contrary to University policy. On appeal, the continued involvement of Dean Hastings tainted the appeal process. This problem was further compounded by the failure of the Committee to provide the Appellant with all information relevant to the appeal including a defamatory communication from Dr. Lamontagne to the Executive Committee. In view of the significant delays occasioned by the Departmental and FGPS review of the Appellant's thesis, the clearly flawed basis of negative evaluation of his thesis despite the high caliber of his published and publishable work, the merits and justice of the case weigh in favour of the Appellant's thesis being referred to an oral hearing.

3. In the event that the Committee declines to exercise its discretion to direct that the Appellant's thesis be submitted to an oral defense, the Appellant submits that his thesis must be reviewed by a newly constituted thesis committee that is fairly constituted without taint or involvement of any person on the previous review committee and with no direct or indirect involvement of Dean Hastings. There is no alternative remedy that is legally or procedurally tenable and permissible under University of Ottawa policies.

## **B. Overview and Background**

4. After over five years of research, the Appellant's revised thesis was failed (i.e. he received a grade of 3) by two out of four thesis examiners and as a result he was forced to withdraw from his program by his Department. Given that the majority result stemming from the thesis evaluation was not failure, but rather there was a "tie" in the respective evaluations recommending failure and pass, the impasse was broken by way of a substantive evaluation of the Appellant's thesis by Dean Hastings dated January 30<sup>th</sup> 2013. The Appellant states and it is the fact that Dean Hastings did not have the necessary expertise to evaluate his thesis and that his decision in this respect violates University policies and constitutes an abuse of discretion.
5. Upon appeal, the Executive Committee of the FGPS by way of decision dated May 10<sup>th</sup> 2013, recommended that the Appellant's thesis be deemed failed and that he be withdrawn from his program. Dean Hastings who had substantively reviewed the Appellant's thesis at the initial review stage also fully participated in the Executive Committee appeal, although he did not cast a vote. The continued involvement of the Dean in the review process upon appeal, and his failure to completely recuse himself from the appeal constitutes a violation of procedural fairness in the Appeal Decision.
6. The appeal process before the Executive Committee of the FGPS constituted a violation of the Appellant's right to procedural fairness in view of the Dean's refusal to recuse himself from the Appellant's case. The decision of Dean Hastings, which was upheld on appeal, is also contrary to

FGPS policy as it purports to be based upon the Dean's discretion to administratively fail a thesis. However, in holding out that he has "broken the tie" between the substantive reviewers of the Appellant's thesis, the Dean overstepped his administrative role contrary to FGPS policy by deciding between two sets of expert reviews of the Appellant's thesis.

7. The decision of the Dean to break the tie in favour of the failure of the Appellant's written thesis in this regard is outside of the Dean's study domain, which is Criminology. It also contradicts the thesis' rigorous evaluation by international peer-reviewed journals which have subsequently published all five core chapters of the Appellant's thesis. It was incumbent upon the Dean to have considered this in his ultimate decision. The Dean's decision to force the failure of the Appellant's thesis is contrary to FGPS policy and is therefore unreasonable. The Dean's role is not to evaluate the Appellant's thesis. A proper exercise of discretion should either be to remit the thesis for further review or to refer the thesis to an oral defense. In all of the circumstances, and for the reasons elaborated below, should the thesis be remitted for further review, it should not be referred back to the same panel of reviewers.
8. Additionally, the Appellant submits that there are other serious procedural fairness issues that affect the integrity of his Thesis Supervisory Committee (TSC). In particular, malice was demonstrated by comments of Professor Mario Lamontagne contained within a communication sent to the SHK and the Executive Committee, which communication was not provided to the Appellant by the Executive Committee. A reasonable apprehension of bias was created by the involvement and comments of thesis examiner, Dr. Edward Lemaire, that taints the entire review process and was not remediable upon appeal. This problem is further compounded by a conflict of interest between thesis examiner, Professor Graham Caldwell, and the Appellant's supervisor as discussed below in respect of an ongoing shared pecuniary and publication interest. In such circumstances, the integrity of the review process has been damaged beyond repair. There is no appropriate or fair remedy that may rehabilitate the review process upon appeal.
9. The Appellant submits that his thesis should be submitted to an oral defense. This position and the technical merits of the Appellant's thesis are substantiated by the Appellant's publication history and track record (**see Appendix A**), which demonstrates a basic modicum of fitness for the Appellant as a doctoral candidate and confirm the published or publishable quality of the component parts of the Appellant's thesis (**see Attachment C**).
10. The Appellant requests that the May 10, 2013 Appeal Decision be set aside and that his thesis be submitted for an oral defense. The Appellant bases his submission on the following six grounds or issues:

- i. The Appeal Decision was contrary to FGPS Policy as it confirmed the substantive evaluation of the Appellant's thesis by Dean Hastings, which was beyond his expertise and unauthorized;
- ii. The Appeal to the Executive Committee of FGPS was tainted by Dean Hastings's involvement;
- iii. The Executive Committee violated the Appellant's right to procedural fairness by failing to disclose information to the Appellant, including a defamatory communication of Dr. Mario Lamontagne;
- iv. The Appeal Decision erred in refusing to set aside the SHK Decision of January 30, 2013 and in failing to order an oral defense of the Appellant's thesis on the ground of bias or reasonable apprehension of bias manifest in the comments of thesis examiner, Dr. Edward Lemaire;
- v. The Appeal Decision erred in refusing to set aside the SHK Decision of January 30, 2013 and failing to order an oral defense of the Appellant's thesis based on a conflict of interest between the Appellant's supervisor and thesis examiner, Dr. Caldwell in his thesis review before the SHK;
- vi. The Appeal Decision erred in refusing to set aside the SHK Decision of January 30, 2013 based on the manifest procedural errors in the revisions process of the Appellant's thesis.

### **C. Procedural Background and Chronology of Events leading to the Appellant's thesis preparation**

- 11. In September 2007, the Appellant entered the SHK doctoral program under the supervision of Dr. Mario Lamontagne.
- 12. By May 2008, the Appellant completed all course work and started working on his thesis proposal.
- 13. In November 2008, Dr. Lamontagne indicated that he was no longer willing to act as the Appellant's supervisor.
- 14. In January 2009, Dr. Gordon Robertson agreed to act as the Appellant's supervisor.
- 15. The Appellant's thesis work was completed between May 2008 and October 2012 on the topic of predicting risk factors to non-contact ACL injury during single-leg landings from increasing vertical heights and horizontal distances.
- 16. In March 2009, a thesis supervisory committee (TSC) was constituted. Subsequently, Dr. Blaine Hoshizaki, Dr. Xiang Li, and Dr. Daniel Benoit withdrew from the Appellant's thesis committee.

17. None of the thesis examiners who evaluated the Appellant's thesis had a background in non-contact ACL injury biomechanics, which is the Appellant's main area of research.
18. The Appellant met Professor Lemaire personally on only one occasion for a discussion about a possible Research Assistant position in January 2011 and did not meet him on any other occasion.
19. Professor Caldwell (external thesis examiner) and the Appellant's supervisor collaborated on a textbook and wrote book chapters in this textbook together. This textbook is entitled *Research Methods in Biomechanics* to be published in 2012. This textbook is a collaborative project which retails for 71.62\$. It also entails an ongoing relationship between the Appellant's supervisor and Professor Caldwell.
20. The Appellant's initial thesis was approved by his advisors in September 2011 for submission to the FGPS and sent for review to thesis committee members in October 2011.
21. In January 2012, the initial thesis was failed and returned to the Appellant for further revisions.
22. Between January and April 2012, the Appellant made numerous requests to his supervisor for a meeting with all thesis examiners to discuss their comments on his initial thesis as instructed by Dean Hastings'. No such meeting took place.
23. Between January and May 2012, the Appellant made all revisions to his initial thesis based on feedback from all thesis examiners as well as advisors prior to sending the revised thesis to the FGPS.
24. The Appellant's revised thesis was approved by his advisors in May 2012 for resubmission to the FGPS.
25. Between August 2010 and March 2013, all five core chapters of the Appellant's thesis (essentially the entire thesis) were published in five separate reputable international peer-reviewed scientific journals. These publications form the thesis topic. The Appellant's thesis is comprised of seven chapters the first and last chapter of the Appellant's thesis consist of the global introduction and global conclusion, respectively.
26. On or about December 2012 all thesis examiners' feedback on the revised thesis were sent to FGPS.
27. On January 30<sup>th</sup> 2013, Dean Hastings decided that the Appellant's thesis was failed.

28. In January and February 2013, the Appellant sent several communications to Dean Hastings highlighting the unfairness of his thesis evaluation.
29. Between February 5<sup>th</sup> and 12<sup>th</sup> 2013, the Appellant repeatedly corresponded with the FGPS to determine the appropriate procedures of appeal to the Executive Committee of FGPS. (**see Attachment N1**)
30. On February 6<sup>th</sup> 2013, the Appellant requested that Dean Hastings provide the appropriate procedures of appeal to the Executive Committee of FGPS (**see Attachment M1**).
31. On February 11<sup>th</sup> 2013, the Appellant wrote to the FGPS seeking an extension of time to submit his letter of appeal. Such extension was granted until March 25<sup>th</sup> 2013.
32. On February 11<sup>th</sup> 2013, the Appellant was informed by Dr. Margaret Moriarty of the documents that would be considered by the Executive Committee of FGPS, outside of the Appellant's letter of Appeal. The Appellant was informed that he would be provided with a copy of this documentation in a timely manner (**see Attachment L1**).
33. On February 18<sup>th</sup> 2013, the Appellant wrote to Dean Hastings indicating that in the case of a tie, a failure was not mandated by the FGPS regulations.
34. On February 28<sup>th</sup> 2013, Dean Hastings decided that he was effectively breaking the "tie" in terms of the evaluation of the Appellant's thesis (**see Attachment P1**).
35. On February 22<sup>nd</sup> 2013, the Appellant sent a follow up email to Dr. Margaret Moriarty requesting the appropriate procedures for appeal and on February 22<sup>nd</sup> 2013 the Appellant was provided a response (**see Attachment O1**).
36. On March 25<sup>th</sup> 2013, the Appellant submitted an appeal to the Executive Committee of the FGPS. He requested a copy of all documentation submitted to the Executive Committee on the Appellant's appeal and confirmed the Appellant's intention to be present at the appeal hearing.
37. On March 25<sup>th</sup> 2013, the Appellant received confirmation from Dr. Moriarty that the Appellant's appeal was received. Dr. Moriarty confirmed that she was able to open all accompanying attachments without difficulty. She confirmed that the appeal hearing was scheduled for May 7<sup>th</sup> 2013 at 1:30pm.

38. On April 8<sup>th</sup> 2013, the Appellant contacted Dr. Moriarty to request and seek confirmation that Dean Hastings would recuse himself from the appeal hearing.
39. On April 8<sup>th</sup> 2013, the Appellant was informed by Dr. Moriarty that Dean Hastings would not participate in the vote.
40. On April 9<sup>th</sup> 2013, a Senior Student Appeal Officer, Mireille Gervais, contacted Dr. Moriarty to determine whether Dean Hastings would recuse himself from the Executive Committee for the Appellant's case.
41. On April 11<sup>th</sup> 2013, Dr. Moriarty confirmed that Dean Hastings would not recuse himself from the Appellant's case.
42. On April 16<sup>th</sup> 2013, the Appellant contacted the ombudsperson to express his concerns about Dean Hastings refusal to recuse himself and seek her help with this matter.
43. On April 25<sup>th</sup> 2013, the Appellant received the documentation submitted to the Executive Committee of the FGPS on his case from Dr. Moriarty.
44. On April 28<sup>th</sup> 2013, the Appellant contacted Dr. Moriarty expressing concerns about the content of the documentation provided and for her to clarify certain points on the documentation.
45. On April 30<sup>th</sup> 2013, Dr. Moriarty confirmed that all of the Appellant's concerns raised about the documentation would be addressed in revised documentation that she would send to the Appellant. She also stated she could not open the attachments sent with the Appellant's letter of appeal, contrary to what she had previously stated, and requested for the Appellant to resend all attachments.
46. On April 30<sup>th</sup> 2013, Mireille Gervais forwarded the Appellant's letter of appeal and all attachments to Dr. Moriarty.
47. On April 30<sup>th</sup> 2013, the ombudsperson informed the Appellant: 1) that Dr. Timothy Stanley would chair the Executive Committee meeting during the Appellant's hearing, 2) that there were two options available to the Appellant in terms of process of handling the Appellant's appeal hearing on May 7<sup>th</sup> 2013, and 3) of his right to challenge by way of appeal to the Senate Appeals Committee how the appeal process to the Executive Committee was handled.
48. On May 1<sup>st</sup> 2013, the Appellant informed the ombudsperson of his dissatisfaction with the process and the conflict of interest given Dean



Hastings' continued involvement including concerns about the lack of transparency and lack of full disclosure on the Appellant's case.

49. On May 1<sup>st</sup> 2013, the ombudsperson informed the Appellant that his situation is quite rare and on the day of his hearing the Appellant would be informed of the process used for the hearing of his case and of Dean Hastings involvement.
50. On May 1<sup>st</sup> 2013, Dr. Moriarty contacted the Appellant indicating that she had difficulty opening attachments accompanying the Appellant's appeal. These attachments were later sent to her by the Appellant.
51. On May 1<sup>st</sup> 2013, Dr. Moriarty informed the Appellant that after seeking legal advice she had to redact certain lines from three attachments of the Appellant's appeal letter to avoid a charge of defamation against the Appellant and the university (**see Attachment S1**).
52. On May 3<sup>rd</sup> 2013, the Appellant sent a follow up email to Dr. Moriarty requesting the revised documentation and re-expressing concerns regarding the initial documentation received (**see Attachment T1**).
53. On May 3<sup>rd</sup> 2013, the Appellant was provided with some additional documentation from Dr. Moriarty.
54. On May 7<sup>th</sup> 2013, prior to the Appellant's hearing, the Chair of the Executive Committee, Dr. Stanley, told Mirielle Gervais and the Appellant that the process in place for several years and used by the Executive Committee will be the process used to hear the Appellant's appeal. No option was presented as stated by the ombudsman. The Appellant chose to proceed with the meeting seeing as it was clear that there was no option for Dean Hastings's recusal. The hearing lasted less than 15 minutes.
55. On May 10<sup>th</sup> 2013, the Executive Committee of the FGPS released its decision letter which maintained the Dean's decision and stated that the Appellant must withdraw from his program of study.
56. On May 16<sup>th</sup> 2013, the Appellant wrote to the University of Ottawa Secretariat seeking an extension of time to submit his letter of appeal to the Senate Appeals Committee. An extension was granted for submission until July 15<sup>th</sup> 2013.



## **PART TWO: DISCUSSION OF ISSUES RAISED ON THE PRESENT APPEAL**

### **ISSUE 1: Appeal Decision Violated FGPS Policy by confirming Dean's Substantive Evaluation of the Appellant's Thesis**

#### **Background Considerations**

57. The Executive Committee of FGPS in its Appeal Decision dated May 10, 2013 stated:

The Committee noted that FGPS Regulation G.5.2 states that a thesis cannot go to defence if two examiners are opposed. This applies both to the initial and to the revised version of a thesis. In the case of your revised thesis, two examiners were opposed, that is, two examiners selected verdict # 3, which states that "The thesis cannot be accepted for defence and must undergo extensive revision BEFORE DEFENCE to ensure it meets the (...) criteria." The Dean of the FGPS, in not allowing your thesis to go to defence, was acting in accordance with the regulation.

58. FGPS Regulation G.5.2 (a) states:

A thesis may not be defended if two examiners are opposed. If one of the examiners has serious reservations concerning the thesis (verdict 3 or 4), the matter will be referred to the Dean of the FGPS. A candidate whose thesis, following a second reading, is not recommended for the defence (a majority of verdicts 3 or 4) must withdraw from the program.

59. In the Dean's letter of February 28<sup>th</sup> 2013 (**see Attachment S**) he states as follows:

*"In your case, there was no majority: two gave a verdict of 3, one gave a verdict of 2 (though with a relatively critical report), and one gave a verdict of 1. The practice in such cases is to refer such cases to the Dean of the FGPS for a final decision (effectively, the Dean breaks the "tie"). In your case, I was not convinced by the reports of the two examiners who were favorable to going to defense, and so my decision was to close the file."*

#### **Appeal Decision Contrary to Regulation G 5.2(a)**

60. The Executive Committee erred in its interpretation and application of FGPS Regulation G 5.2(a) for several reasons. First of all, the Regulation does not permit directly or indirectly for the Dean to "break the tie" by making a substantive review of a candidate's thesis. On a plain reading of the regulation, this authority does not exist.

61. To allow the Dean the authority to prefer one set of reviewers over another in the case of a tie places the Dean in an expert role of analyzing which expert's reasons are more compelling. The Dean is not part of the Thesis Supervisory Committee, but rather is an administrative decision maker operating within the rubric of FGPS Regulations – he does not have residual power to review and evaluate thesis work. Were this the case, this would undermine the academic integrity of the Thesis Review process.
62. The Dean, who has no special academic knowledge or expertise in Human Kinetics or the topic of the Appellant's thesis, was not chosen to provide a review of the thesis, but rather, has a role in the administrative process of ensuring that the substantive thesis review is done consistently with FGPS Regulations. In this regard, the Dean's role is limited to the administrative decision of referring a thesis to further review.
63. The examination of the Appellant's thesis was done by Dr. Lemaire, Dr. Caldwell, Dr. Pierrynowski, and Dr. Labrosse – all of whom have backgrounds in Human Kinetics, but no specific knowledge in the areas relating to the focus of the Appellant's thesis. The academic background and area of specialization of the Dean Hastings and all members of the Executive Committee of the FGPS are not in Human Kinetics. These individuals' study domains do not relate to the Appellant's thesis and are clearly much less relevant than any of the backgrounds of those examiners of the Appellant's thesis. Accordingly, neither the Dean nor the Executive Committee had the requisite background and expertise to discount those opinions that recommended that the Appellant's thesis not be failed.
64. The Dean may not "close the file" or deny a further written review of a thesis unless a majority of verdicts of 3 or 4 are rendered in a candidate's case. In the case of the Appellant, a majority of reviewers at no time rendered verdicts of 3 or 4. Were, in essence, the Dean to hold the tie breaking vote he would be compelled to evaluate the Thesis. However, with respect, the Dean is not academically competent to rate a Thesis for which he has not been approved as a reviewer at any level – let alone at level 3 or 4.
65. As a proper matter of interpretation of Regulation G 5.2(a), file closure or forcing a candidate to withdraw from the program can only arise upon a majority of verdicts that recommend failure of the thesis. Given the role of the Dean, he may not lawfully purport to "prefer" or evaluate or be "convinced" of evaluations, as this would entail a personal evaluation that he is not competent to make.
66. Conversely, the stipulation of a candidate being withdrawn from the program based upon a "majority" of failing verdicts must inform the statement that a thesis may not be defended if two examiners are opposed. FGPS

regulations stipulate a minimum of four and a maximum of seven thesis examiners. Had the Appellant the benefit of a five thesis examiners where two examiner gave two 3s (two are opposed) and the other three examiner, three 2s (three passes), the Appellant will have to be withdrawn from the program, that is, fail their PhD. This is non-sensible given the regulation that is applicable is the last sentence of FGPS regulation G.5.2 which states “A candidate whose thesis, following a second reading [a revised thesis as in the Appellant’s case], is not recommended for the defence (**a majority of verdicts 3 or 4**) must withdraw from the program.”

67. FGPS policy does not mandate a failure in case of a tie. Moreover, it is submitted that the only fair and consistent manner to resolve the impasse would be to go to an oral thesis defense or to have a reassessment by professors in the Appellant’s study domain. To do otherwise places the Dean and the Executive Committee in a position of substantive review of the Appellant’s thesis. Concerns about expediency, time and administration are not indicated within the policy – the only provisions in the relevant policy dictate a process for substantive review. In these circumstances, it is submitted that the Dean and Executive Committee, by inserting themselves in this thesis review process have contravened Regulation G.5.2(a).
68. Moreover, the Dean and Executive Committee have ignored all of the evidence on the record, which substantiates the fitness of the component chapters of the Appellant’s thesis for an oral defense. In essence, the Dean’s decision contradicts the expert opinion of two of the four examiners of the Appellant’s thesis as well as the Appellant’s track record of publishing the Appellant’s entire doctoral thesis in several international reputable peer-reviewed journals.
69. Because there are strong reasons to doubt the factual accuracy of the negative assessment of the Appellant’s thesis, the Senate should allow him the benefit of an oral defense. In this regard, the Committee must consider the fact that certain of the Appellant’s negative reviewers concluded that his thesis did not meet standards of academic publication. This assessment was wrong as a matter of fact. Without considering the substance of the subjective evaluations of the Appellant’s reviewers, which may not be impugned on appeal, it is relevant to consider facts pertaining to the publishable quality of the Appellant’s thesis.
70. Significantly, some thesis examiners had serious doubts that any of the core chapters of the Appellant’s thesis would ever be published. According to a thesis examiner’s report, “*Although, Paper III, IV, and V have been submitted for publication, I believe they will not be accepted in their present form. Given that the “acid-test” to say something has advanced knowledge is publication in a peer-reviewed journal, this thesis, in its present form, does*

*not meet this test*” Another thesis examiner’s report stated “*I would not consider the final three manuscripts (III, IV and V) merit publication due to, among other things, described further, methodological concerns such as lack of sufficient subjects.*” None of the thesis examiners knew at the time of their evaluation that two significant chapters of the Appellant’s thesis had been accepted for publication. Had the examiners been aware of these facts, their assessment may have been different. In any event, this discrepancy reveals the speculative concerns of the examiners to be factually incorrect.

71. To investigate these discrepancies, the Appellant sent his thesis to eight experts around the globe with vast knowledge, extensive publication history and experience specifically in the Appellant’s study domain. Their responses are attached hereto (**please see Attachment C**). Note that these experts have conducted research, published extensively and are very well respected in the Appellant’s study domain of ACL injury Biomechanics. Here again, there are vast discrepancies in reviews between the two thesis examiners that failed the Appellant and these subject matter experts from around the globe. These experts’ reviews constitute further external confirmation of the scientific merit of the Appellant’s research.

***Appellant’s Thesis Meets Requirements of the SHK and of the FGPS for a doctoral degree and is of academic publication quality***

72. The requirements for a doctoral candidate as stated in the University of Ottawa’s SHK Graduate Handbook are as follow: “*The thesis involves the generation of new knowledge within the psychosocial or biophysical disciplinary areas of Human Kinetics and is expected to be of publishable quality.*”
73. The SHK Graduate Handbook also states “*The thesis should also make a significant contribution to the literature*” a tenet that the Appellant’s thesis has met. Furthermore, the SHK Graduate Handbook also states the thesis must follow “*Whatever format is submitted, the same standards of quality (described in the FGPS General Regulations, Section G.1) apply.*” FGPS General Regulations, Section G.1 states:
- “*A thesis must follow the outlined standards of quality:*
- 1) constitute a significant contribution to knowledge;*
  - 2) embody the results of original investigation and analysis on the part of the student; and*
  - 3) be of such quality as to merit publication.*”
74. The Appellant’s thesis consists of seven chapters. The first and last chapters constitute a Global Introduction and Global Conclusion,

respectively. The five remaining core chapters now stand as published peer-reviewed journal papers. All five core chapters of the Appellant's thesis were rigorously peer-reviewed by at least two subject matter experts in the domain of ACL injury biomechanics (the Appellant's study domain) at a respected scientific journal with a very strong editorial board. Under the process of "peer review" at least ten different independent experts have reviewed the Appellant's work and have considered it original, innovative, as well as adding to the body of scientific knowledge, and subsequently agreeing to publish it. The fact that five separate editorial boards have rigorously reviewed and published the Appellant's work is solid external confirmation of the scientific merit of the Appellant's research and validates the scientific quality and innovative nature of the Appellant's thesis, as well as confirming the Appellant's ability to create and disseminate knowledge.

75. Notably, two co-authors on the sixth chapter of the Appellant's thesis are both professors at Aalborg University, whose research group the Appellant collaborated. This constitutes external confirmation of the scientific merit of the Appellant's research. In fact, one of these co-authors, Dr. John Rasmussen, is one of the main developers of the AnyBody Musculoskeletal Modeling System Software and is a world renowned researcher in Biomechanics.
76. The Appellant's thesis makes a significant contribution to the scientific body of knowledge given it addresses unanswered questions in regards to predicting risk factors to non-contact ACL injury during single-leg landing, which includes but is not limited to: 1) What are the main effects and interactions of vertical height and horizontal distance on single-leg landing kinematics and kinetics and how do these findings relate to risk of non-contact ACL injury; 2) Determine the coupling between trunk, hip, knee and ankle kinematics, and the link between these kinematic variables, knee energetics, ground reaction forces, and subsequently risk of ACL injury during single-leg landing from increasing vertical heights and horizontal distances; 3) What are the gender differences in whole-body kinematics during single-leg landing from increasing vertical heights and horizontal distances and do these differences explain the gender disparity in non-contact ACL injury rate; 4) How to develop, validate and apply a musculoskeletal model to study single-leg landings over varying vertical heights and horizontal distances; 5) Determine if musculoskeletal differences between genders can explain the gender bias in ACL injury rate; and 6) Present for the first time to the scientific community a whole-body musculoskeletal model that determines joint reaction and muscle forces during single-leg landings from increasing vertical heights and horizontal distances.
77. Attestation to the Appellant's research merit is also substantiated by the fact that Chapter 3 of the Appellant's thesis published in *The Knee* journal was

among the most downloaded article 90 days in a row at this journal (**see Attachment X1**).

78. Furthermore, the ideation, study design and conception, data collection, data analysis and interpretation, musculoskeletal modeling, simulation, and validation, as well as, all publications conception, creation, drafting, revising, writing, preparation and submission were exclusively performed by the Appellant. As such, in accordance with FGPS regulations, Section G.1 the Appellant's thesis is compliant with the set requirements for a doctoral thesis and therefore he should be permitted to defend his thesis orally.
79. For the above reasons, it is submitted that the Appeal Decision erred in confirming the Dean's decision purporting to "break the tie" and that such decision was contrary to FGPS Policy G.5.2(a). Despite there being two negative verdicts against the Appellant's thesis, there are strong factual and academic reasons that militate in favour of referring the Appellant's thesis to an oral defense. The ability of the Appellant to independently publish the component chapters of his thesis in peer-reviewed journals provides justification for the Senate to exercise its discretion to submit the Appellant's thesis to an oral defense.
80. At an oral defense stage, the Appellant's thesis will be tested by appropriately qualified academic experts. Whereas it would be an error to force the withdrawal of the Appellant from his program based on two negative reviews, it would be entirely appropriate for his thesis to be sent to oral defense. A referral to an oral defense offers the opportunity for further rigorous academic review of the Appellant's thesis without which the thesis will not be approved. There is no academic "risk" in referring the Appellant's thesis at this stage. If indeed the publishable quality of all substantive chapters of the Appellant's thesis are a false indicator of the publishable quality of his work, this assessment will necessarily be made upon oral review.
81. The inordinately positive publication record of the Appellant and the unfortunate level of delays occasioned by the Appellant in his written review process justifies a remedy of referral of his thesis to an oral defense at this stage by the Senate.



## **ISSUE 2: The Appeal to Executive Committee of FGPS was tainted by Dean Hastings' continued involvement**

### **Background Considerations:**

82. Prior to the appeal hearing on May 7<sup>th</sup> 2013 before the Executive Committee of FGPS, the Appellant made several requests to ensure that Dean Hastings recuse himself from the Appellant's case (**see Attachment Q1**).
83. The Appellant sought the help of the university ombudsperson to speak to the proper individuals to ensure that the Dean would recuse himself. The ombudsperson informed the Appellant that the options available to him were: 1) the Appellant agree with the process outlined by the chair on May 7<sup>th</sup> 2013 or, 2) the Appellant wait until the next Executive Committee meeting where they could better formalize the process for the Appellant's appeal (**see Attachment U1**).
84. On May 7, 2013, the day of the Appellant's appeal hearing, the Appellant was told by the Chair Dr. Stanley that the process available to him was in fact already in place and that it has been used by the University of Ottawa for several years (contradicting the ombudsperson presented options).
85. Prior to joining the hearing, during the Appellant's hearing, and after leaving the hearing, Dean Hastings was present with other Executive Committee members. During the meeting Appellant inquired and was informed that the Dean's role was to apprise the panel of the background in the Appellant's case and he was there for the in-camera discussion of the facts. Furthermore, the Appellant was told that only during the decision making would the Dean recuse himself from the meeting room.
86. The Dean's involvement in the Appellant's appeal would foreseeably taint the entire Executive Committee given that it was the Dean's very decision that was being appealed. The documentation provided by FGPS outside of the Appellant's letter of appeal did not reveal any discussion on any of the facts the Appellant presented nor did it even debate the arguments raised in the Appellant's letter of appeal.
87. Prior to the Appellant's hearing on May 7<sup>th</sup> 2013, he informed the Executive Committee secretariat that the documentation provided to the committee was all of the Appellant's own information, mostly technical. However, the Executive Committee failed to provide numerous critical communications (**see Attachment R1**).
88. After numerous communications with FGPS to clarify the grounds for the Appellant's appeal, the Appellant was informed that he can only appeal on the grounds of procedural fairness. (**see Attachment J1**).



*Dean's Involvement in Appeal Decision Violated Procedural Fairness*

89. The Appellant submits that the involvement of Dean Hastings in the appeals process before the Executive Committee of the FGPS constitutes an irremediable procedural error for several reasons.
90. Despite the Executive Committee's assurance that the Dean would not cast a vote in the final decision of the Committee, he was relied upon by the Committee to provide it with the factual context of the appeal.
91. This approach raises serious procedural problems in that the decision maker whose decision or purported decision is under appeal cannot by definition be independent of his own decision. Accordingly, the facts considered by the Executive Committee were not independent and, regardless of what may have been the good intentions of the Dean, the Dean's involvement as a factual resource person for the Committee would raise a reasonable apprehension of bias in the mind of an average person acquainted with the case.
92. That the Dean was involved in separate or "in camera" discussions with the Executive Committee, i.e. in the absence of the Appellant, indicates that the role of the Dean was more than that of a witness.
93. As a witness, or even as an interlocutor for the School of Human Kinetics, the Dean's communications with the Executive Committee should have been made exclusively in the presence of the Appellant, whereby the Appellant should have had an opportunity to address all comments raised by him.
94. The mere presence of the decision-maker of the subject decision in closed discussions with the Executive Committee creates a reasonable apprehension of bias that cannot be shaken or extricated from the Appeal Decision. In other words, it would be impossible for the Appellant or any reasonable person to identify what influence the Dean had upon the outcome of the decision and/or to identify the relevant comments or actions that impacted on the decision.
95. As a matter of fairness, the Appellant should have had the benefit of addressing each observation raised by the Dean. This right was not afforded to the Appellant, as such the Appeal Decision must be set aside.
96. Moreover, the Appellant submits that the Dean's dual role as administrator of the Departmental decision and "tie breaker" being a violation of FGPS Policy G.5.2(a), his presence in the appeals process constitutes a further violation of the policy. That is, not only was it unfair that the Dean rendered

an unauthorized decision, but his right to confidentially relate to the Appeal Committee the context of his own unauthorized decision compounds the original violation of the FGPS policy. This error cannot be retroactively cured by maintaining the Executive Committee's decision. The Executive Committee's decision must be set aside.

### **ISSUE 3: Past Supervisor, Dr. Mario Lamontagne's Inappropriate Comments undermine Fairness and Integrity of the Review Process**

#### **Background Considerations:**

97. In September 2007, the Appellant became among the first students registered in the newly inaugurated School of Human Kinetics doctoral program where he set out to conduct research under the supervision of Dr. Mario Lamontagne.
98. In November 2008, Dr. Lamontagne and the Appellant agreed to end their working relationship. After some time searching, Dr. Gordon Robertson agreed to become the Appellant's supervisor.
99. Subsequently, the Appellant discovered that there was significant rivalry between Dr. Gordon Robertson and Dr. Mario Lamontagne. For this reason, among other things, since November 2008 to present, Dr. Lamontagne has set out to damage the Appellant's reputation and to defame him.
100. On or about May 3, 2013, four days prior to the Appellant's hearing with the Executive Committee, Dr. Lamontagne emailed the Executive Committee members to complain to all members of the Executive Committee about the Appellant (**Attachment H1**). Significantly, this email was not provided to the Appellant by Dr. Moriarty when she sent the Appellant all documentation provided to the Executive Committee regarding the Appellant's appeal.
101. Dr. Lamontagne has deliberately hindered the progress of the Appellant's research project and defamed his reputation so as to ensure that the Appellant fails (**Exhibit A through E of Attachment G1**). More specifically, Dr. Lamontagne stated to the Director of SHK that he "will use all his resources to abort this thesis project" (**Exhibit A of Attachment G1**).

#### **Failure to Disclose Lamontagne Email Constitutes Procedural Error**

102. The Appellant submits that the failure to disclose Lamontagne email constitutes a violation of his right to procedural fairness.

103. This email in itself undermines the fairness and integrity of the review process for a member of staff to express an intention to abort a thesis project. It is highly unusual for this communication to have been sent to the Director. It was a fatal procedural error for this communication not to have been disclosed to the Appellant.
104. The Appellant submits that the Lamontagne email was considered by the Executive Committee and that its content was inflammatory and stigmatizing of his work. He submits that he should have had a fair opportunity to have seen and reviewed the email prior to his appeal and in the context thereof.
105. It is further submitted that the Dean had received a copy of the Lamontagne email and was accordingly may have been influenced by this email in his decision.
106. The failure of the Executive Committee to have disclosed the Lamontagne email constitutes a serious violation of procedural fairness that cannot be remedied as there is no reliable means of extricating the influence of this letter from the deliberations of the Dean and/or his discussions with the Executive Committee. The Executive Committee's failure to have disclosed the Lamontagne email completely deprived the Appellant of his right to respond to its contents.
107. Accordingly, the decision of the Dean was tainted or there is a reasonable apprehension of bias that such taint did exist, which the Appellant was not permitted to address as a function of the Executive Committee's failure to disclose the Lamontagne email.

**ISSUE 4: Appeal Decision erred in failing to set aside Review Committee's Assessment of his thesis based on reasonable apprehension of bias of examiner Dr. Edward Lemaire**

**Background Considerations:**

108. On November 3, 2011, Dr. Edward Lemaire sent the below email to the Appellant's Supervisor indicating his inability to keep his mind "neutral" in the Appellant's case (**see: Attachment I**).

**From:** Lemaire, Ed [elemaire@Ottawahospital.on.ca]  
**Sent:** Thursday, November 03, 2011 11:55 AM  
**To:** Gordon Robertson  
**Subject:** RE: Nicholas Ali

Hi Gord,  
I am envious that you are in South America!

When the office emailed me about the defense I asked if they had someone else who could replace me since I have had many “unsuccessful interactions” with Nicolas over the past few years. However, I did say that I would follow through with the evaluation if no one else was available. It seems that they had no problem finding someone else. Overall this is for the best since I seem to have trouble keeping my mind neutral in this case.

Ed  
Edward Lemaire, PhD  
The Ottawa Hospital Rehabilitation Centre, Institute for Rehabilitation Research  
and  
Development  
Associate Professor, U. Ottawa, Faculty of Medicine  
President, ISPO Canada

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109. Upon the Appellant submitting the initial version of his thesis, he was informed that an examiner had recused himself from his thesis committee. He received an email informing him of this (**please see Attachment D**). The Appellant was later informed by his supervisor that this thesis examiner was in fact Dr. Lemaire.
110. When the Appellant’s supervisor, the Director of SHK, and the Appellant were attempting to find a replacement examiner, the Appellant was informed that Dr. Lemaire would, after all, remain on his Thesis supervisor committee (TSC) and would evaluate his thesis.
111. The Appellant expressed concerns to the Vice Dean and Director of SHK as well as his supervisor of the impact of this decision on his thesis defense (**please see Attachment Da**). Moreover, the Appellant’s supervisor has expressed on occasions that Dr. Lemaire was unfair and stated on May 10<sup>th</sup> 2012 “Ed knows you, and he maybe unfair but I don’t know why you would think that”.
112. Following the first evaluation of the Appellant’s thesis, the Appellant was asked to make substantive changes before submitting a revised thesis. In line with FGPS requirements, the Appellant prepared a review sheet to address every comment made by all thesis examiners. Dr. Lemaire made 115 comments on the initial version of the Appellant’s thesis resulting in 74 pages of responses (almost twice the number of pages of responses than all the other thesis examiners combined – **please see Attachment O**).
113. The Appellant responded to every comment made by this examiner to the best of his ability. Despite having diligently addressed every comment, Dr. Lemaire gave the Appellant a grade of three for the revised thesis. However, many of Dr. Lemaire’s comments related to the initial submitted

thesis and not to the revisions. Effectively, this thesis examiner was continuing a review of the initial thesis but at the revised thesis stage.

114. To add to the confusion, following the evaluation of the revised thesis, the Appellant was informed by his supervisor that Dr. Lemaire did not want the Appellant to fail his revised thesis even though he gave the Appellant a grade of 3 (**please see Attachment F and B1**).
115. However, the fact that Dr. Lemaire had told the Appellant's supervisor that he did not intend to fail the Appellant was never raised by the Appellant's advisors in their letter to Dean Hastings requesting him to reconsider his decision not to allow the Appellant to go to an oral thesis defense. This is despite the Appellant's express request to his advisors that they communicate this promptly to Dean Hastings (**see Attachment G**).
116. To provide some context, the Appellant was first informed of the fact that he had received two evaluations graded at 3 in a meeting with Dean Hastings on December 13th 2012. At that meeting, Dean Hastings gave the Appellant's supervisor and the Appellant an opportunity to address their concerns.
117. With regard to the letter written by the Appellant's advisors to the attention of Dean Hastings, the Appellant was provided with the draft of this letter (**see Attachment K**). The draft letter and the official letter sent to the Dean bear notable differences (**see Attachment Ka**). The Appellant had no input into this letter nor was he consulted by his advisors to provide input to this letter – the Appellant was only provided the draft for reference as a result of his distress.
118. Upon reading the official letter sent to the Dean and observing the inaccuracies and differences with the initial draft, the Appellant informed Dean Hastings that he would write to him (**please consult Attachment L for the Appellant's email dated December 19<sup>th</sup> 2012**).
119. Upon seeing the Appellant's communication to Dean Hastings the Appellant's advisors immediately instructed the Appellant not to write to the Dean (**please see Attachment Mb**), stating that the Appellant should trust them and that they had confidence the Dean would grant the Appellant an oral thesis defense.
120. The Appellant later wrote to Dean Hastings telling him that he would not be sending a letter as he trusted his advisors with their strategy (**please see Attachment L and Attachment Ma**).
121. On January 20, 2013 the Appellant learnt that the Dean did not recommend his thesis for oral defense. At that point, the Appellant informed

Dean Hastings that Dr. Lemaire did not intend to fail him and that there was also a serious apprehension of bias to consider.

122. When the Appellant finally did raise the issue of apprehension of bias of Dr. Lemaire directly with Dean Hastings, the latter informed him that his supervisor did not support this allegation (**please see Attachment J**). This position contradicts the information in Attachment I.
123. Subsequently, the Appellant informed Dean Hastings of most of his concerns (**please see Attachment R**) and requested to meet with the Dean. However, the Dean did not meet with the Appellant.
124. The Dean however did meet with the Appellant's supervisor and staff of the SHK. Due diligence to meet with all parties involved and affected in light of new information was not met by Dean Hastings (**see Attachment Rb for the Appellant's letter and the Dean's response**).
125. The Appellant was also not provided with any details regarding the Dean's decision to deny him the opportunity to be heard despite his request for a meeting. Further, in the Appellant's response, the Dean neither mentioned nor weighed the arguments made by the Appellant (**please see Attachment Rb**). The Dean also indicated that the Appellant's concern with Dr. Lemaire came after the fact, which completely ignores the evidence to support it, which pre-dates the Appellant's initial thesis evaluation.

*Appeal Decision Failed to Consider Bias of Dr. Lemaire and must be set aside*

126. The Appellant's submission regarding Dr. Lemaire exemplifies the strongest manifestation of bias extending beyond a mere apprehension of bias to the higher standard of a "closed mind".
127. Not only would a reasonable person viewing the email of Dr. Lemaire conclude that the latter was or would be biased in the Appellant's case, but the evidence is that the comments of Dr. Lemaire discounted the detailed and substantive revisions performed by the Appellant addressing all of Dr. Lemaire's comments.
128. The self-admission that Dr. Lemaire was having difficulty keeping his mind "neutral" on the Appellant's case denotes precisely what is stated. A reasonable person could not help but doubt the objectivity of Dr. Lemaire as an examiner.
129. From an evidentiary perspective, Dr. Lemaire's insistence on providing the Appellant with a failing grade despite the Appellant's extensive revisions demonstrates a contradiction and/or disregard for the evidence and intransigence on the part of Dr. Lemaire.

130. Where there is evidence of a closed mind in conjunction with an incontrovertible indication of reasonable apprehension of bias, the review decision/ verdict of Dr. Lemaire should have been set aside or removed, thereby leaving a majority of Committee members in favour of the Appellant's case.
131. In view of the evidence of reasonable apprehension of bias/ closed mind of Dr. Lemaire, the Dean was obliged not to have preferred or accepted the negative verdicts in the Appellant's case and particularly should have rejected the assessment by Dr. Lemaire.
132. Accordingly, the Dean's "decision" on appeal was procedurally unfair and should have been set aside by the Executive Committee.
133. The invalidation/ quashing of Dr. Lemaire's review, provides further grounds upon which the Senate should refer the Appellant's thesis to an oral defense as only a single assessment would be negative and the majority of remaining verdicts militate in favour of referral of the Thesis to an oral defense.

**ISSUE 5: The Appeal Decision erred in refusing to set aside the SHK Decision of January 30, 2013 and failing to order an oral defense of the Appellant's thesis based on a conflict of interest between the Appellant's supervisor and thesis examiner, Dr. Graham Caldwell in his thesis review before the SHK;**

**Background Considerations**

134. Dr. Caldwell and the Appellant's supervisor have and are currently publishing a textbook together (see reference below) for which there is financial gain.
- Research Methods in Biomechanics, Second Edition, Robertson, D.G.E., Caldwell, G.E., Hamill, J., Kamen, G., and Whittlesey, S.N. (eds), Human Kinetics, Champaign, IL, USA. Publication due in 2012.***
135. According to FGPS regulation G.5.1.C there is a conflict of interest when *"...a proposed external examiner has collaborated or published with the supervisor(s) or candidate within the past six years."*
136. As per FGPS regulation G.5.1.C *"The proposed external examiner should be at arm's length from the PhD candidate, from the thesis research and from the thesis supervisor."* Accordingly, the FGPS, and the SHK have a



procedural duty to ensure no conflict of interest exists in the selection of external thesis examiners.

137. FGPS regulation G.5.1.C states *“The test of whether or not a conflict of interest might exist is whether a reasonable outside person could consider a situation to exist that could give rise to an apprehension of bias.”* FGPS regulations G.5.1.C also states, *“The candidate's program must take reasonable steps to avoid recommending an examiner whose relationship with the candidate or supervisor could be seen as jeopardizing an impartial judgment on the thesis.”*

138. The names of the external examiners submitted by the Appellant's supervisor in regards to **Attachment W1** were Dr. Graham Caldwell and Dr. Michael Pierrynowski. These external examiners were rejected and it was requested that new names be provided. These two examiners are not the only individuals capable of examining the Appellant's thesis. Significantly, almost a year later, after Dr. Daniel Benoit quit the Appellant's thesis committee, the Appellant's supervisor insisted that Dr. Pierrynowski examine the Appellant's thesis.

*Selection of Dr. Caldwell as Examiner Contrary to FGPS Policies*

139. The selection of thesis examiners by the Appellant's supervisor violates FGPS regulation G.5.1.C given the examiner's appearance of being impartial is questionable.

140. Dr. Caldwell and the Appellant's supervisor's financial interest in their textbooks are sufficient to appear to influence the objective exercise of Dr. Caldwell duties as a thesis examiner. As well, prior to Dr. Caldwell's review of the Appellant's thesis, he informed the Appellant's supervisor and SHK that any discussions stemming from his feedback on the Appellant's thesis he wanted to have with the Appellant's supervisor and not the Appellant.

141. Based on FGPS regulation G.5.1.C, from an outsider's perspective, the relationship between the Appellant's supervisor and Professor Caldwell would not be perceived as being based on arm's length criteria.

142. Equally importantly, the Department of Health Science confirmed that a conflict of interest existed in the list of external examiners submitted by the Appellant's supervisor This email is dated September 15<sup>th</sup> 2011. (**Attachment W1**).

143. There is, therefore, a patent conflict of interest between Dr. Caldwell and the Appellant's supervisor given that the textbook they are collaborating on and publishing together creates links of a professional and financial nature. The Appellant supervisor admits that he "continue[s] to edit and write a book" with Dr. Caldwell which is basically his own admission of a collaboration (**see Attachment V1**).
144. There is no evidence that the Program took any step to identify or assess the problem raised by selection of Dr. Caldwell, which is a flagrant violation of FGPS Policy G.5.1.C. This is not a matter of a perceived conflict of interest, but rather it is a conflict of interest by definition, which the Program had an obligation to avoid.
145. It is submitted that the conflict of interest may not be cured retrospectively by decision of the Dean or otherwise. The conflict exists and nothing was done to address it. It is submitted that the Dean knew or should have known about the conflict and was negligent in not having addressed it any time.
146. Rather than identifying, raising and addressing the matter of conflict of interest, the Dean (as alleged in issue number 1 above) acted in a manner wholly inconsistent with his responsibility. The Dean's role is to apply FGPS policy rather than accept its breach.
147. Accordingly, the Dean should not have permitted Dr. Caldwell to act as an examiner. In the face of this flagrant violation, the Dean's assessment that the negative verdict assessments of the Appellant were compelling must be set aside as being a function of a violation of FGPS policy.
148. In all of the circumstances, the revelation of this conflict of interest is a further indication that the Dean and the Program did not properly vet the Appellant's examiners. This procedural failure militates in favour of remitting the Appellant's thesis for a new written review before a new panel of reviewers. However, in view of the previously mentioned strong external indicators of the strength of the Appellant's thesis, it should be directly referred to an oral defense.

**ISSUE 6: The Appeal Decision erred in refusing to set aside the SHK Decision of January 30, 2013 based on the manifest procedural errors in the revisions process of the Appellant's thesis.**

***The Thesis Examiner's Report for a Revised Thesis Form was inappropriately administered as well as misleading***

149. There was a fatal procedural mistake at the FGPS given that the form sent with the Appellant's revised thesis was incorrect. This form did not specify that the Appellant's thesis was a revised thesis. The examiners completed their evaluation without this knowledge. This was misleading as it allowed for the possibility that the Appellant may have the opportunity to undertake further revisions. This is particularly true for Dr. Pierrynowski who was only added to the Appellant's committee at the second round and hence, had never seen the Appellant's thesis. Accordingly, all examiners were unaware of the consequence of their decision and review upon completing their evaluation. They were also unaware that they were evaluating articles that had, in most part, been published.
150. The examiners were informed that it was a revised thesis and provided the correct form only after they had already completed their evaluation of the Appellant's thesis. The potential consequence of this mistake was overlooked by Dean Hastings. To ask an examiner to change a grade after completing the Appellant's evaluation is procedurally inappropriate as it calls into question the credibility and report already submitted to the FGPS by this examiner. Even after having been provided the proper form and information about the revised version of the Appellant's thesis, it is unlikely that the examiners would take the time nor have the energy to go back and re-review a thesis with new parameters in mind.
151. Also, the form titled "Thesis Examiner's Report for a Revised Thesis" is misleading and ill conceived. This form seeks to determine whether a student should pass or fail his/her dissertation. With that in mind, asking for the evaluators to award a grade between four options is ineffective. By offering four categories, one of which depends on anticipating the grade of another thesis examiner, is inappropriate.
152. In the situation that ensued, all evaluators were unaware of the implications regarding a pass or fail grade. For these reasons, the procedures and form used to administer the evaluation of the Appellant's revised thesis are flawed.

### Violation of FGPS Policy on Sharing Comments

153. Dr. Pierrynowski sent the Appellant's supervisor the Appellant's revised thesis evaluation report prior to sending it to FGPS. This is a violation of FGPS regulation G.5.2.C and highlights the relationship existing between these two individuals. The letter sent to Dr. Pierrynowski by FGPS states:

*"While the evaluation is in progress, it is important to avoid any discussion about the thesis with the supervisor(s), the other examiners or the student. Otherwise, the evaluation may be invalid and we may be compelled to redo it with a new examining board."*

154. Furthermore, the Appellant's supervisor informed the Dean that he had not been in contact with Dr. Pierrynowski, yet he had received the Appellant's thesis evaluation report prior to FGPS receiving it. Conversely, at a meeting with Dean Hastings, the Dean stated that Dr. Pierrynowski confirmed he had had no communications with the Appellant's supervisor.

155. This inappropriate communication occurred in spite of the FGPS sending a letter to both the Appellant's advisors to the effect that they not communicate with any of the thesis examiners.

### Lack of Fairness in Supervision

156. The Appellant's supervisor demonstrated a closed-mind to the Appellant's ideas, which adversely impacted upon the fairness of the review process in the Appellant's case.

157. The Appellant's supervisor was annoyed with him on many occasions indicating that he had "... poisoned the well." This attitude impaired the Appellant supervisor's judgment to deal with the Appellant and his thesis in an objective manner. Also, despite repeated claims of the Appellant "poisoning the well" the Appellant's supervisor retained the internal thesis examiners, never expressed their apprehension of bias, did not intervene to protect procedural fairness.

158. For example, Dean Hastings requested that the Appellant's supervisor sit with all thesis examiners to go over their comments raised on the initial version of the Appellant's thesis and the Appellant's supervisor agreed he would have these discussions with the examiners (**please see Attachment V**). The Appellant also requested on numerous occasions for the Appellant's advisors and him, or himself, to sit down with all examiners (**please see Attachment W**).

159. The Appellant prepared a review sheet to address each comment raised by all examiners on his initial thesis as submitted. Using this review sheet,

the Appellant asked his supervisor to meet with each examiner to ensure that all concerns were addressed to their satisfaction. However, the Appellant's request was denied by his supervisor (**please see Attachment Z**).

160. The Appellant's supervisor stated that Dean Hastings said he should use his review sheet and sit down with the examiners to address their concerns (**see Attachment I1**). The Appellant's supervisor sent Dr. Lemaire, Dr. Benoit and Dr. Caldwell the thesis review sheet the Appellant prepared prior to FGPS sending it to them (**see Attachment E1**), so that he could have these discussions with them. The Appellant did not send any of the examiners any review sheets or revised thesis. In fact, the Appellant did not communicate with any of the examiners during this process given he was forbidden to do so by his supervisor.
161. The Appellant's supervisor was responsible to address all major issues prior to submitting the thesis review sheet and the revised thesis to FGPS. Notably, despite the Appellant's requests to participate in the review process with the examiners to discuss changes, this request was denied despite prior assurances to the contrary (**please see Attachment X**). The Appellant tried to resolve this matter with this supervisor but without success (see Attachment Y).

#### Indications of Bad Faith and/or Lack of Fairness in Thesis Review Process

162. It is submitted that the Appellant's supervisor provided inconsistent and contradictory directions and failed to act in good faith, which has contributed to the Appellant's present situation. For example, Dr. Benoit failed the Appellant at the initial thesis submission. In a phone conversation in mid 2012 between the Appellant's supervisor and Dr. Heidi Sviestrup (where the Appellant was present) the Appellant's supervisor said Dr. Benoit's comments were "nasty", "unfair" and "horrible". Yet the Appellant's supervisor and the Vice Dean of graduate studies at SHK, Dr. Sviestrup, both did nothing to bring about fairness.
163. None of the concerns raised at the thesis review stage were mentioned or explained to the Appellant at an earlier stage by the Appellant advisors. Accordingly, the Appellant's advisors failed in their obligation to prepare, mentor and supervise the Appellant's work.
164. After many months of hard work, as instructed by the Appellant's advisors, all comments raised by Dr. Benoit were addressed by the Appellant, but he was later told that Dr. Benoit wished to remove himself from the TSC. Dr. Benoit's precipitous departure remains unexplained.

165. The Appellant repeatedly complained to his supervisor about fair treatment by some TSC members but the latter maintained they were all fair despite the evidence presented and the Appellant's very early knowledge of the apprehension of bias of at least one examiner.
166. The Appellant's supervisor repeatedly stated that Dr. Lemaire did not know the definition of PPMC or partial eta squared, yet this examiner repeatedly questioned the merit of the Appellant's statistics, in both the initial and revised thesis.
167. The Appellant's office belongings were packed and moved without the Appellant's knowledge, while the Appellant's supervisor did nothing.
168. The Appellant's supervisor was not forthcoming about the date he got the Appellant's thesis evaluation report from Dr. Pierrynowski and never disclosed this to the Dean.
169. The Appellant was told by his supervisor that Dr. Pierrynowski was the best person in musculoskeletal modeling and then was later told his work in musculoskeletal modeling was dated (published in 1986) and he had many personal life struggles.
170. Finally the Appellant's supervisor told him it was "a mistake" to entrust him with his guidance.

#### Cumulative Effect of Fairness Concerns and Procedural Fairness Violations

171. Based on the above, the Appellant was not afforded procedural fairness in the review process of his thesis. There is no remedy that can be retroactively imposed to cure this unfairness. An appropriate remedy requires that this review process be discounted or that the Appellant be afforded the benefit of the doubt in respect of the "tie" in the Appellant's thesis evaluations. This requires that the Appellant's thesis be referred to an oral examination. Any reliance directly or implicitly upon the adverse findings of a review process that was procedurally unfair must be set aside.

### **PART THREE: REMEDY SOUGHT**

172. The role of the Dean in administering the process of written thesis review is to interpret, apply and abide by FGPS policy. Rather than applying FGPS policy, the Dean made a substantive evaluation decision regarding the merits of the Appellant's thesis and to "close his file". Such decision is not provided for by FGPS policy and is in contradiction to FGPS Policy G.5.2(a).

173. Moreover, the Dean's decision, which was upheld by the Executive Committee must be set aside as it rests itself upon the patent conflicts of interest inherent in the involvement of both Dr. Lemaire and Dr. Caldwell as examiners for the Appellant. The selection of these professors constitutes a violation of FGPS policy G.5.1(c) and also constitutes a procedural error on the ground of bias, reasonable apprehension of bias or the closed mind standard relative to the involvement of Dr. Lemaire.
174. Apart from the procedural errors committed by the Dean in respect of the original appeal and his failure to apply and/or consider relevant FGPS policies, his involvement in the appeal to the Executive Committee of the FGPS raises a separate error of procedural fairness and reasonable apprehension of bias in view of the Dean's decision being the decision under appeal. The Dean may not act as a resource person for the Executive Committee and have any communication with the Executive Committee in the absence of the Appellant. Regardless of the Dean's intention, as a decision maker, whose decision is under review, his non-transparent involvement with the Executive Committee created a reasonable apprehension of bias that cannot be cured or explained away.
175. Additionally, the failure of the Executive Committee to disclose the defamatory and troubling email of Dr. Lamontagne by which he purports to abort the Appellant's thesis is another error of procedural fairness that raises fairness concerns both for the process before the Executive Committee as well as in respect of undue influence upon the Dean. The Appellant's inability to address these concerns as part of his appeal has denied him an important procedural right. The corollary to such non-transparent defamatory communication on the record is that it is objectively impossible to discern what if any impact this communication had upon the mind of the Dean or the Executive Committee.

## **Conclusion**

176. Based on the foregoing, the Appellant respectfully submits that his thesis be referred to an oral defense. Although, the Appellant submits, in the alternative that his thesis be submitted for further review, such remedy would weigh squarely against the merits and justice of the case.
177. Considered in its context, this case cries out for the Senate Appeals Committee to permit the referral of the Appellant's thesis to an oral defense. Such a referral would be in the interests of academic integrity, the letter and spirit of FGPS governing regulations and the University of Ottawa. While it is submitted that the Appellant has passed the litmus test of publishable



quality of his thesis, if there is doubt in this regard, this doubt will be eschewed or become manifest at the stage of an oral defense.

178. The litany of errors and less than exemplary administration of the Appellant's thesis written review demands that his thesis be referred to an oral defense.

**ALL OF WHICH IS SUBMITTED THIS 15<sup>th</sup> day of JULY 2013.**



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